

DATE: November 4, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08850

ECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 38-year-old employee of a defense contractor. She held a security clearance from about 1989 to 2000. Applicant used marijuana in social settings approximately once every four months from about January 1999 to May 2002. She stopped using marijuana because she stopped socializing with the people who provided the marijuana to her, and because she realized it could have serious adverse consequences on her employment. Applicant reported her marijuana use on her security clearance application, and avers she will never use illegal drugs again. Applicant's repeated, deliberate, use of marijuana over a three and one-half year period, was not an isolated incident or an aberrational event. Applicant has not mitigated the security concerns arising from her drug involvement. Clearance is denied.

STATEMENT OF THE CASE

On July 31, 2002, Applicant submitted an application for a security clearance. Under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 12, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive's Guideline H, Drug Involvement.

Applicant answered the SOR in writing on May 4, 2004. She elected to have a hearing before an administrative judge.

The case was assigned to me on August 11, 2004. On September 14, 2004, I convened a hearing. The government presented documentary evidence, including Applicant's security clearance application and a statement to investigators. Applicant presented documentary evidence, called three witnesses, and testified during the proceeding. DOHA received the transcript on September 29, 2004.

FINDINGS OF FACT

Applicant admitted the factual allegations in the SOR. Applicant's Answer to SOR, dated May 4, 2004. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 38 years old. Ex. 2, at 1. She is a senior scientist for a defense contractor, working in software engineering. *Id.* at 2.

Applicant received a Secret security clearance in 1989. Ex. 2, at 7. Since then, she has worked for defense contractors in a variety of positions requiring access to classified information. Tr. at 20. In 1996 she received a Top Secret clearance. Ex. 2, at 7. Her duty performance has been exemplary, winning praise from co-workers and supervisors who consider her a professional, responsible, and reliable employee. Ex. C; Ex. D; Tr. 29-30, 32-33, 40.

Applicant married in 1991. *Id.* at 3. She has a child of the marriage-a son born in 1995. *Id.* Applicant separated from her spouse in 1998, and the divorce became final in 1999. *Id.*

While attending a Super Bowl party in January 1999, Applicant was offered the chance to smoke a marijuana cigarette and she accepted. Ex. 3, at 1. She tried it out of curiosity. She only took one or two puffs on the proffered marijuana cigarette, but felt physiological effects from the drug. *Id.* Between January 1999 and May 2002, Applicant used marijuana at social engagements about nine times. *Id.*

Applicant last used marijuana in May 2002. This was because she stopped associating with the people who provided the drug to her, and because she recognized that drug use could jeopardize her security clearance. Tr. at 19. When offered marijuana thereafter, she refused it. Ex. 3. In July 2002, she completed an SF 86, Security Clearance Application, and reported her marijuana use. Ex. 2, at 7. She also admitted her drug involvement when questioned by security investigators in January 2003. Ex. 3.

POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline H, Drug Involvement. Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. Directive ¶ E2.A8.1.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An

administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Under the Directive, Guideline H, ¶ E2.A8.1.2.1, "*any drug abuse*" may be disqualifying. Applicant admitted the allegations in the SOR. In her responses to the security clearance application, Applicant's admitted smoking marijuana nine times between January 1999 and May 2002. (Exhibit 2, at 7.) She also admitted her marijuana use to security investigators (Exhibit 3), and during the hearing (Tr. at 16-17). The Government's documentary matters and Applicant's admissions constitute substantial evidence of drug abuse by Applicant, raising security concerns.

The Directive sets out certain conditions that might mitigate the security concerns arising from drug abuse. Under ¶ E2.A8.1.3.1 of the Directive, it may be mitigating where the "*drug involvement was not recent*." Applicant has worked for defense contractors since 1989. She held a Secret clearance beginning in 1989, and was granted a Top Secret clearance in 1996. Ex. 2, at 7.) She admitted using drugs between January 1999 and May 2002. Her drug abuse was revealed in her security clearance application dated July 31, 2002, and resulted in this action. I conclude Applicant's drug abuse was recent, therefore this mitigating condition does not apply.

It may also be mitigating where the drug abuse was "*an isolated or aberrational event*." Directive, ¶ E2.A8.1.3.2. Applicant explained that she smoked marijuana in social settings, approximately once every four months for over three years, from January 1999 to May 2002. She indicated this was the only time she had ever been exposed to marijuana in her life. Applicant contends this was an aberrational event for her. If Appellant had only used marijuana on one or two occasions, it might be considered an aberrational event. However, where one uses marijuana repeatedly (although sporadically) for more than three years, that use constitutes a pattern rather than an aberration. I conclude this mitigating condition does not apply.

Under the Directive, ¶ E2.A8.1.3.3, another mitigating conditions is "[a] *demonstrated intent not to abuse any drugs in the future*." Applicant avers she stopped using marijuana in May 2002 partly because she stopped seeing the group of friends that provided the drug to her and partly because she recognized the potential adverse consequences. She indicated that the importance of refraining from the illegal use of marijuana was made more significant to her when she completed her security clearance application in July 2002. (Tr. at 19.) Applicant stated that she had been offered marijuana since that time, and refused it. (Exhibit 3.) She also provided Exhibit B, a report of a drug test administered on July 23, 2002, showing a negative result. I conclude this mitigating condition applies.

Finally, it may be mitigating where an applicant shows the "*satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements . . .*" There is no evidence indicating Applicant attended or completed a drug abuse rehabilitation program, therefore this mitigating condition does not apply.

I considered all the circumstances in light of the "whole person" concept. Applicant first used marijuana when she was 32 years old; clearly she was a mature adult who should have appreciated the consequences of her actions. Drug abuse is a criminal offense. Applicant used marijuana repeatedly for more than three years. During a portion of that time,

Applicant held a top secret clearance. Applicant was well aware that marijuana use was a crime, and violated her company's policy. Applicant contends she did not consciously violate the policy because it did not occur to her. Nonetheless, it is clear her drug use was entirely voluntary. Applicant now recognizes the serious consequences of drug abuse, and asserts she will never use illegal drugs again. Weighing all these considerations, I conclude Applicant has not mitigated the security concerns arising from her drug involvement.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Michael J. Breslin

Administrative Judge